

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1345 OF 2006

Edwin Misquitta ..... Petitioner

vs.

M/s. Welcome Group Sea Rock Sheraton ... Respondent

Mr. V. Achutha Pai advocate for petitioner

Mr. Abhai Nevagi and

Sarang Khanzode i/b.

Paras Kuhad & Associates, advocates for respondent

CORAM: D. G. KARNIK J.

DATE:26/6/2006

**P.C.:**

1. Heard learned counsel for the parties. Learned counsel for the respondent no.1 raises a preliminary objection for admission of the petition and states that the impugned award was passed on 21<sup>st</sup> July 2003 and the present petition has been filed on 28<sup>th</sup> April 2006, that is after lapse of nearly three years and the delay has not been satisfactorily explained.
2. I have perused the petition and also perused para 21 in which the delay is sought to be explained. The averments explaining the of delay are vague. It is alleged that after the decision the petitioner was depressed and on account of the depression he could not file the petition in time. No evidence has been

produced before me to show that depression was of such a nature that the petitioner was unable to attend to his routine work or was prevented from filing the petition. I am therefore inclined to hold that the delay has not been satisfactorily explained.

3. Even on merits, I am satisfied that the finding of fact recorded by the Labour Court that the petitioner was not a workman is not only a possible finding but a probable finding of fact. In his cross examination (para 8 of the cross examination) the petitioner initially denied that he was recommending leave of the subordinates and appraising the performance of his subordinates. When the petitioner was confronted with the documents he admitted his signatures below the recommendations of leave of his subordinates. He also admitted his signatures made as supervisor on the appraisal reports of his subordinates. The Labour Court has therefore held that the petitioner was performing supervisory duties and was not a workman. This finding is clearly based on evidence and is a possible finding. In the circumstances there is no merit in the petition. The petition is hereby rejected.

(D. G. KARNIK J)